
**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Civil Writ Petition No.14997 of 2005

Date of decision: 29 .11.2006

Shital Fibres Limited and another

...Petitioners

Versus

The State of Punjab and others

...Respondents

**CORAM: HON'BLE MR.JUSTICE ADARSH KUMAR GOEL
HON'BLE MR.JUSTICE RAJESH BINDAL**

Present: M/s.K.L.Goyal, Advocate, V.K.Aggarwal,

Sandeep Goyal and Vivek Goyal, Advocates
for the petitioners.

Mr.Amol Rattan Singh, Additional Advocate General,Punjab
for the respondents.

JUDGMENT

This judgment will dispose of CWP Nos.14997, 15031, 15114, 15137 and 15436 of 2005.

Facts have been taken from CWP No.14997 of 2005.

This petition seeks quashing of notices Annexures P-7 to P-10 issued under Section 51 of the Punjab Value Added Tax Act, 2005 by respondent No.3, The Excise & Taxation Officer-cum-Detaining Officer, I.C.C. (Export), Mehmadpur (Shambo), District Patiala and respondent No.4, the Assistant Excise & Taxation Commissioner, I.C.C. (Export), Mehmadpur (Shambo), District Patiala.

Case set out in the petition is that the petitioners are dealers, registered under the provisions of Punjab Value Added Tax Act, 2005(for short “the Act”) and engaged in the manufacture and sale of Mink Blankets. The petitioners sent a consignment of Mink Blankets on 2.9.2005 under an invoice addressed to a Kota dealer. When the consignment was being transported from Jalandhar - place of business of the petitioners to the place

of consignee at Kota, goods were intercepted by respondent No.3 on the ground that goods were taxable but no tax had been charged in the bill and thus there was an attempt at evasion of tax.

Case of the petitioners is that invocation of jurisdiction to impose penalty at the check post was not called for as in the Schedule 'A' prescribed under Section 16 of the Act, list of tax free goods carried an entry "Textile fabric including terry, towels" at Serial No.52 while only relevant entry in the list of the taxable goods prescribed under Section 8 of the Act in Schedule 'B' is at Serial No.5 "Bed sheets, pillow covers and other made ups". It was submitted that case of the petitioners is that the textile fabric included blankets as per interpretation given to the term 'textile' in the judgments by the Hon'ble Supreme Court in **Union of India and others Versus Gujarat Woollen Felt Mills** 1977 E.L.T. (J 24), **Delhi Cloth & General Mills Co. Ltd. Vs. State of Rajasthan and others** (1980) 46 S.T.C. 256 (SC), **Fenoplast Vs. State of A.P. And others** (1999) 144 STC 559(SC), **Porritts & Spencer (Asia) Ltd. Vs. State of Haryana** 1978 (42) STC 433 (SC), **Innamuri Gopalan and others Vs. State of Andhra Pradesh and another** (1963) 2 SCR 888 (SC), **Filterco and another Vs. Commissioner of Sales Tax, Madhya Pradesh and another** (1973) 61 STC 318 (SC), **Shree Meenakshi Mills Ltd. Vs. Union of India** AIR 1974 Supreme Court 366, **Ess Dee Carpet Enterprises Vs. Union of India and others** AIR 1990 Supreme Court 455 and various High Courts in **Hoshyar Singh Suresh Chandra Sarees Pvt. Ltd. Vs. Commissioner, Sales Tax, New Delhi and another** (2004) 136 STC 173 (Delhi), **State of Tamilnadu Vs. Madura Coats Ltd.** (1996) 100 STC 403 (Madras) and **The State of A.P. Vs. Goodyear India Ltd.** (1989) 74 STC 47 (Madras).

Thus, on behalf of the petitioners, contention raised is that there could be no question of attempt at evasion where arguable contention was being put forward after producing requisite documents and making full and effective disclosure of facts without any mis-declaration, mis-description or concealment. It is submitted that the said provision is not meant to be invoked in such a situation at all and invocation of the jurisdiction in such a case is colourable exercise of power and not

permissible under the law.

In the reply filed, objection regarding maintainability of the writ petition at this stage, in view of the availability of alternative remedies, was raised in view of the judgments in **The Transport Corporation of India Ltd. Vs. State of Andhra Pradesh and others (1985) 60 STC 14 (AP)**, **State of Goa and others Vs. Leukoplast (India) Ltd. (1997) 105 STC 319** and **Titaghur Paper Mills Co. Ltd. and another Vs. State of Orissa and another AIR 1983 SC 603**. It is stated that goods in question were clearly covered by Schedule 'B' and tax @ 4% was attracted. It was submitted that the term “made ups” in view of Chapter 63 of the Central Excise Tariff Act, 1985 covered blankets also, which is also referred in the invoice accompanying the goods. Therefore, once an expression “made ups” has been included in Schedule 'B' listing taxable goods under Section 8 of the Act, tax was clearly attracted, which was sought to be evaded by petitioners treating the said goods as non taxable.

Learned counsel for the State pointed out that in the invoice itself assessee had given the description of the goods with reference to entry 6301 4000 Synthetic Printed Blankets in the Central Excise Tariff Act, which occurs in the chapter of textile made ups.

Learned counsel for the State also brought to our notice memorandum dated 16.9.2005 issued from the office of the Excise and Taxation Commissioner, Punjab stating that tax was attracted on blankets. Same view was reiterated in memorandum dated 29.9.2005. Thereafter from 15.10.2005 an amendment was made in Schedule 'A' List of Tax free goods at Serial No.59 to the following effect:-

“Blanket made of shoddy yarn and shawls”

and Schedule 'B' was also amended at entry 5 to the following effect:-

“Bed sheets, pillow covers and other made ups, but excluding blankets made of shoddy yarn and shawls”

We have considered the rival contentions and perused the record.

The question for consideration is whether a case was made out

for invoking jurisdiction conferred under Section 51 of the Act for detaining goods being transported to evade tax for which penalty of 30% to 50% of the value of goods was provided and whether bar of availability of alternative remedy ought to be applied.

As regards the objection as to availability of alternative remedy, the matter was gone into in the connected matter decided by this Court on 22.11.2006 being CWP No.4603 of 2005 (**Xcell Automation v. State of Punjab and others**) and after referring to the judgments of the Hon'ble Supreme Court in **State of UP v. Mohammad Nooh**, AIR 1958 SC 86 and **Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and others**, AIR 1999 SC 22, it was held that if on undisputed facts, an authority was shown to have assumed jurisdiction which it did not possess, bar of alternative remedy was not absolute. In the present case, for the reasons recorded in later part of the judgment, we are of the view that exercise of power to impose penalty at the check post was without jurisdiction.

Coming to the merits, it may be observed that provisions to check and detain goods at a check post to prevent evasion of tax have already been upheld as being necessary to check evasion with a view to enforce the charging provision under the Punjab VAT Act, 2005 with reference to entry 54 of List-II of the 7th Schedule of the Constitution. We have also noticed that mere conferring of such drastic power did not mean that power could be used arbitrarily. Invocation of such powers is called for for checking evasion when a person either conceals relevant information, gives misleading information or acts in any other clandestine way or where from the available information itself, attempt to evade tax is patent. The said power has to be exercised with caution and not as a substitute for ordinary assessment or penalty as separately provided for under the Act. Exercise of power may some time be overlapping and mere alternative procedure is not conclusive for not exercising the said powers, where it is clear that either there is evasion there being deficiency in documents, inaccurate declaration having been made about description, value and contents of goods or otherwise but where there may be bonafide dispute about

interpretation of law, about taxability or otherwise, summary power of imposing penalty at the check post is not intended to be exercised.

In **Xcell Automation** (supra), after referring to the judgments in **The Check Post Officer Coimbatore etc. v. M/s K.P. Abdulla and Bros.**, AIR 1971 SC 792 = 27 STC 1, **M/s Sodhi Transport Co. and another etc. v. State of U.P. and another etc.**, AIR 1986 SC 1099 = 62 STC 381, **Delite Carriers (Regd.) v. State of Haryana and others**, (1990) 77 STC 170 (SC), **Mool Chand Chuni Lal v. Shri Manmohan Singh, Assistant Excise and Taxation Officer, Octroi Incharge, Shambhu Barrier, District Patiala and another**, (1977) 40 STC 238 (P&H) and **Amrit Banaspati Company Limited v. State of Punjab and others**, (2001) 122 STC 323 (P&H), (on the issue of vires of provisions relating to inspection of goods in transit); **The Cement Marketing Co. of India Ltd. v. The Asstt. Commissioner of Sales Tax, Indore and others** AIR 1980 Supreme Court 346, Para 5, **Automobile Products of India Limited v. State of Karnataka**, (1991) 81 STC 414 (Karnataka), **Orient Paper and Industries Limited and another v. State of Orissa and others**, (1995) 97 STC 490 (Orissa), **Utkal Galvanisers Limited v. Commissioner of Commercial Taxes, Orissa and others**, (1997) 104 STC 222 (Orissa), **Shahnas Trading Co. and others v. State of Kerala and others**, (2002) 127 STC 1 (SC), **Parry and Company Limited v. Commissioner of Sales Tax, UP Lucknow**, (2004) 138 STC 437 (All.), **United Polymer Industries v. State of Punjab and others**, (2006) 146 STC 571 (P&H), **Commissioner of Sales Tax and another v. P.T. Enterprises and another**, (2000) 117 STC 315 (On the issue of jurisdiction of the Check Post Officer); **State of Haryana and others v. Sant Lal and another** (1993) 4 SCC 380, **Tripura Goods Transport Association and another v. Commissioner of Taxes and others**, AIR 1999 SC 719, **Saral Kumar v. State of Haryana and others**, (2000) 118 STC 17 (SC), **State of Rajasthan and another v. D.P. Metals**, AIR 2001 SC 3076, **Swastic Roadways and another v. State of M.P. And others**, (2004) 3 SCC 640, **A.B.C. (India) Ltd. v. State of Assam and another**, (2005) 6 SCC 424, **M/s. Krishna Bus**

Service Private Limited v. The State of Haryana and others, AIR 1985 SC 165, (provisions for records to be maintained by carrying and forwarding agents and detention of transport vehicles); **The Comptroller and Auditor General of India, Gian Prakash, New Delhi and another v. KS Jagannathan and another,** 1987 SC 537, **Lucknow Development Authority v. M.K. Gupta** AIR 1994 SC 787, **Tata Cellular v. Union of India,** AIR 1996 SC 11, **Common Cause, A Registered Society v. Union of India,** AIR 1999 SC 2979, **Union of India and another v. SB Vohra and others,** AIR 2004 SC 1402 Para 25, and (judicial review by High Court under Article 226), position was summed up as under:-

- (1) Exercise of power at the check post, to be valid, should have reasonable nexus with the attempt at evasion.
- (2) Straight-jacket approach is not called for and each instance of exercise of power has to be seen in the light of individual facts. Neither exercise of power can be restricted, wherever required for checking attempt at evasion nor can be extended to areas where there was no attempt at evasion.
- (3) In an appropriate case, the writ court may examine the exercise of power and interfere if exercise of power is found to be arbitrary, malafide and without nexus with attempt at evasion.
- (4) If there are disputed questions and there is reasonable nexus of exercise of power with attempt at evasion, writ petition against imposition of penalty at the check post cannot be entertained.
- (5) Where relevant documents are duly produced but a bonafide plea against taxability is raised and there is neither mis-declaration nor concealment, exercise of

power of imposing penalty at the check post on the ground of attempt at evasion may not be called for.

In the present case, in view of the decisions of the Hon'ble Supreme Court relied upon by the petitioners, it cannot be held that the contention of the assessee was not a bonafide arguable point. Though, we do not express any final view on merits, which may be gone into in appropriate proceedings, if necessary, we have to observe that merely because word "made ups" has been mentioned in Schedule 'B' of taxable goods, it will not be conclusive of the blankets being covered by such expression even if under the Central Excise Tariff Act, the position may be different. The fact that the blankets were being treated as tax free under the Punjab General Sales Tax Act, 1948, which was in force upto 31.3.2005 before the enactment of VAT Act.

Goods in question were detained on 2.9.2005 which were prior to memorandum in question and the amendment. The fact that the State issued memorandum and amended the schedules itself shows that there was scope for different interpretation on the relevant date. Learned counsel for the State has explained that the memorandum and the amendment became necessary on representation of the association.

It cannot be held that on the relevant date the issue was not free from difficulty or that the assessee was fully aware of taxability and had no justification to advance an argument that the goods in question were not taxable.

For the above reasons, assumption of jurisdiction by the Check Post Officer was not called for by drawing an inference that there was any attempt at evasion of tax.

In view of the above, this writ petition is allowed and impugned notices Annexures P.7 to P.10 are quashed.

(Adarsh Kumar Goel)
Judge

November 29, 2006
Pka/gs

(Rajesh Bindal)
Judge
